

Applicant respectfully traverses this rejection for the following reasons. It is believed that the oath/declaration was not defective because it did identify a portion of the specification in which an error occurred, namely that portion of the specification which incorrectly identifies a Department of Transportation (DOT) rule at 49 C.F.R. §171.5 as prior art. This was an error which caused the applicant to claim less than he had a right to claim in the patent.

However, applicant is submitting herewith a new reissue declaration. In this new reissue declaration, the statement about the error in the specification is more specific. The paragraph at column 2, line 60 through column 3, line is identified, and additional language has been added to clarify how this caused the claiming of less than applicant had a right to claim had this error not occurred.

Based on the revised reissue declaration, it is respectfully submitted that any defects in the initial reissue declaration have been overcome, and the corresponding rejection of the claims should now be withdrawn.

Objection to Application Based on Failure of Assignee to Establish Ownership Interest in Patent

In giving this objection, the Examiner states:

An assignee must establish its ownership interest in order to support the consent to a reissue application required by 37 C.F.R. 1.172(a). The assignee's ownership interest is established by:

- (a) filing in the reissue application evidence of chain of title from the original owner to the assignee, or
- (b) specifying in the record of the reissue application where such evidence is recorded in the Office (e.g., reel and frame number, etc.).

The Examiner states further, "The 3.73(b) statement fails to set forth the proper chain of title since there has been more than one assignment of the application."

Applicant respectfully traverses this rejection because the chain of title has been made of record in the current reissue application. Copies of the Notice of Recordation of Assignment Document have been filed herein for the original assignment by the inventor to Sales Equipment Co., Inc. and the subsequent assignment from Sales Equipment Co., Inc. back to the inventor and current reissue applicant. However, a new 3.73(b) Statement is filed concurrently herewith which lists the chain of title specifically and is signed by a party authorized to act on behalf of the assignee. Additionally, the chain of title has been added to the revised reissue declaration filed herewith.

Therefore, it is believed that any objection to the application has been overcome.

Rejection of Claims 48-86 under 35 U.S.C. §251--Improper Capture of Broadened Subject Matter Surrendered in the Original Patent

The Examiner has rejected claims 48-86 "as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based." The Examiner states further:

A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent show that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. §251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Accordingly, during the prosecution of S.N. 09/054,221 the original claims 1-47 included the explicit limitation with respect to transmission and clutch controls (see claims 1 and 19) and the claims were allowed based on these explicit limitations (see the reasons for allowance in paper #3, which applicant failed to contest after receiving paper #3). Therefore, Applicant surrendered the subject matter with respect to the transmission

and clutch controls during the prosecution of the 09/054,221 application and such subject matter should be included in the newly proposed reissue claims 48-86.

Applicant respectfully traverses this rejection for the following reasons. It is acknowledged in that the present reissue application at least some of the claims would result in a broadening reissue if allowed. Of course, a broadening reissue in the present case is allowable herein because the broadening claims were presented within two years after the issue date of the original patent. 35 U.S.C. §251, MPEP 1412.03.

However, to determine whether an applicant has surrendered subject matter, it is necessary to look to the prosecution history for arguments and changes in the claims made in an effort to overcome a prior art rejection. MPEP 1412.02. In the original application that issued as the patent in the present reissue application, none of the claims were amended and the applicant submitted no arguments which can be considered because the first action by the Patent Office was a Notice of Allowance. Therefore, the reissue applicant herein has not surrendered any subject matter prior to filing this reissue application. Accordingly, this rejection is improper and should be withdrawn.

The recapture rule bars the patentee from acquiring through reissue claims that are, in all respects, of the same scope as, or are broader in scope than, those claims cancelled from the original application to obtain a patent. MPEP 1412.02. Here, no claims were cancelled in the original application.

Further, there was an error in what was believed to be prior art, and this error was specifically included in the specification of the patent. This error caused a failure by the undersigned attorney to appreciate the full scope of the invention. Such errors are correctable through reissue. *In re Wilder*, 736 F.2d 1516, 222 U.S.P.Q. 369 (Fed. Cir.

1984). If it had been realized that the believed prior art was actually published *after* the reduction to practice of the invention that is the subject matter of the application and resulted in the patent, the claims in the original application would have been drafted more broadly. Because of this error, claims 48-86 were not originally submitted. But for this error, applicant would have claimed more in the original application at which time he would have had every right to do.

The pertinent part of the rule, as published on October 1, 1997 provides:

(iii) If there is an unintentional release of lading to the environment during transfer, the internal self-closing stop valve shall be promptly activated, and the qualified person unloading the cargo tank motor vehicle shall promptly shut down all motive and auxiliary power equipment. Prompt activation of the internal self-closing stop valve may be accomplished through:

* * *

(C) A fully operational remote-controlled system capable of stopping the transfer of lading by operation of a transmitter carried by a qualified person attending unloading of the cargo tank motor vehicle. Where the means for closure of the internal self-closing stop valve includes a remote-controlled system, the attendance requirements . . . are satisfied when a qualified person:

(1) Is carrying a radio transmitter that can activate the closure of the self-closing stop valve;

(2) Remains within the operating range of the transmitter;
and

(3) Has an unobstructed view of the cargo tank motor vehicle at all times that the internal stop-valve is open.

This detailed reference to a radio transmitter for activating the closure of the self-closing stop valve was not published prior to the reduction to practice of the present invention. The actual prior art appears in a DOT Interim rule published February 19,

1997. This document was disclosed on the Information Disclosure Statement for this reissue application. In this rule, it is noted that:

NPGA [National Propane Gas Association] has suggested the development of a "deadman" or a remote valve actuation system, possibly using a lanyard. Automobiles are commonly equipped with remote transmitter devices that fit on key rings to unlock doors or open trunk lids from 50 feet away. If such a manually activated device were used to close internal self-closing stop valves, would it provide a level of safety equivalent to the requirement for a passive automatic shut-down system required by [another section of the rules].

It is clear that this interim rule only discusses the possibility of a some vaguely described remote transmitter without any attention paid to how this would work. In fact, the interim rule poses the question of whether it would work at all. Thus, it cannot be considered a prior disclosure of the invention claimed in new claims 48-86.

Thus, the original patent was partly inoperative or invalid by reason of the applicant claiming less than he had a right to do.

Therefore, the broader claims of the reissue application are properly submitted within the scope of 35 U.S.C. §251, and the rejection based on improper recapture should be withdrawn.

Rejection of Claims 48-86 under 35 U.S.C. §251--Failure to Specifically Point Out the Differences from Original Claims 1-47

The examiner has further rejected claims under 35 U.S.C. §251 "as failing to specifically point out the differences between the original claims 1-47 and the newly proposed claims 48-86." In response, applicant provides the following:

There are five groups of new claims, namely 48-59, 60-69, 70-77, 78-84 and 85-86. Each of these groups has been filed in this reissue for the reasons already stated herein.

Claims 48-86 are different from the original claims in that they encompass a hose reel drive means, reel motor and a remote control for sending a signal to the reel motor. None of the original claims covered this structure in the same manner.

Claims 60-69 are different in that they claim a valve control means and remote control for sending a signal to the valve control means.

Claims 70-77 are different in that they claim a throttle control means for the engine throttle and a remote control for sending a signal to the throttle control means, thereby controlling power to the pump.

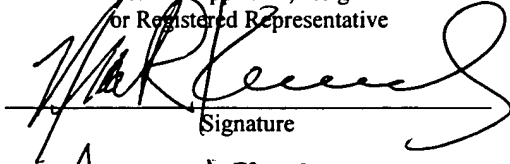
Claims 78-84 are different in that they claim the valve control means, power take-off control means and a remote control for sending signals to the valve and power take-off control means.

Claims 85 and 86 are different in that they claim an ignition controller and a remote control for sending a signal to the controller to shut down the vehicle engine.

It is believed that the above fully describes the differences between the new claims and those in the original patent. Therefore, this rejection may now be withdrawn.

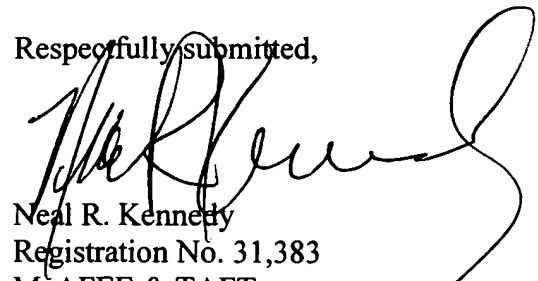
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D. C. 20231, on August 19, 2002.

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